



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN 13 2016

Donald Porter
Whiting Refinery Manager
BP Products North America Inc.
2815 Indianapolis Boulevard
Whiting, Indiana 46394

REPLY TO THE ATTENTION OF:

Re: Docket No: **CAA-05-2016-0027**

Dear Mr. Porter:

Enclosed is the fully executed Consent Agreement and Final Order (CAFO) in the resolution of the above case. It was filed on 6/13/2016 with the Regional Hearing Clerk.

The penalty amount agreed upon is \$50,313, which is due 30 days after the effective date of the CAFO, and is to be paid by an electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

The comment or description field of the electronic funds transfer must state Respondent's name and the docket number of this CAFO.

Additionally, the CAFO requires that a notice of payment that states Respondent's name and the docket number of this CAFO be sent to:

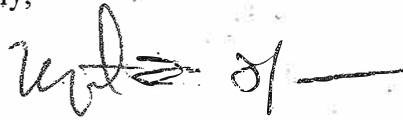
LaDawn Whitehead
Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Ellen Riley (SC-5J)
Enforcement Officer
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Kasey Barton
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

If you have any questions, please contact Ellen Riley (312) 886-9497, or your attorney may contact Kasey Barton, Associate Regional Counsel at (312) 886-7163.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Hans", followed by a horizontal line.

Michael E. Hans, Chief
Chemical Emergency Preparedness and Prevention Section

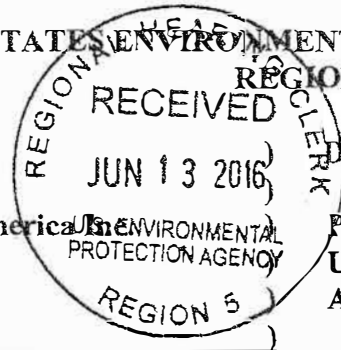
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

BP Products North America Inc.
Whiting, Indiana,

Respondent.



Docket No. CAA-05-2016-0027

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5, Chicago, Illinois.

3. Respondent is BP Products North America Inc., a corporation doing business in Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. Section 112(r)(1) of the CAA is known as the “General Duty Clause.”

10. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), defines “regulated substance” as a substance listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3).

11. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source” as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person, and from which an accidental release may occur.

12. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance into the ambient air from a stationary source.

13. Section 302(e) of the CAA, 42 U.S.C. § 7602, defines “person” as an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department or instrumentality of the United States and any officer, agent, or employee thereof.

14. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412, defines “owner or operator” as any person who owns, leases, operates, controls or supervises a stationary source.

15. Under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), EPA promulgated a “List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention,” which is codified at 40 C.F.R. § 68.130, and includes in Table 1 and Table 3 the following regulated substances: ethane, pentane, butane, propane and hydrogen sulfide.

16. Under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000, for CAA violations that occurred after December 6, 2013.

17. Section 113(d)(1) limits EPA’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

18. EPA and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

Factual Allegations and Alleged Violations

19. Respondent owns and operates a petroleum refinery located at 2815 Indianapolis Boulevard, Whiting, Indiana (“the Facility”).

20. Respondent is a corporation, and is therefore a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

21. Respondent is the “owner or operator” of the Facility, as defined in Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

22. The Facility is a “stationary source,” as defined in Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

23. At the Facility, Respondent operates the Number 12 Pipestill (No. 12PS), which Respondent began operating in June of 2013. No. 12PS fractionates crude oil into various products and sends these products to other refinery units for further processing.

24. Respondent operates a “Once Through Cooling Water (OTCW)” system at the Facility. The OTCW system is used as non-contact cooling water throughout the Facility.

25. The OTCW system flows through a piping system to Six Separator for treatment. Six Separator is open to the ambient air and works by allowing time for oil, if any, to float to the surface based on the difference in density between oil and water. The OTCW flow ranges from 55 to 85 million gallons per day and the residence time varies from 50 to 90 minutes.

26. On March 24, 2014, a discharge of crude oil from the Facility to Lake Michigan occurred from the Facility’s OTCW system outfall located at Six Separator.

27. Respondent conducted an investigation of the March 24, 2014 crude oil discharge to Lake Michigan and issued an “Incident Investigation Report” (“Report”) dated August 20, 2014, that described the findings and recommendations from the investigation.

28. Respondent's Report explains that the source of the crude oil discharge originated at No. 12PS due to the installation of a temporary quench line that connected the No. 12PS brine line to the OTCW system. Due to abnormal conditions at No. 12PS, pressure in the brine line exceeded the pressure in the OTCW system, at which time the check valves on the temporary quench line failed, allowing a mixture of brine and crude oil to flow backwards through the quench line into the OTCW system, Six Separator, and Lake Michigan.

29. Respondent installed the temporary quench line on October 11, 2013 and removed the temporary quench line on March 25, 2014.

30. Respondent's Facility is a stationary source that produces, processes, handles, and/or stores regulated substances within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). The crude oil processed at No. 12PS contains "regulated substances" under Sections 112(r)(2) and (r)(3) of the CAA, 42 U.S.C. §§ 7412(r)(2) and 7412(r)(3), including ethane, pentane, butane, propane, and hydrogen sulfide.

31. Respondent did not install a two-inch check valve on one end of the temporary quench line, as indicated by the proposed design of the temporary quench line. Respondent created an email containing a list of materials for the temporary quench line installation that included the two-inch check valve, but the installed temporary quench line did not include the two-inch check valve.

32. Respondent did not develop a "Job Note" containing detailed instructions for the installation of the temporary quench line, which Respondent's internal procedures required for this type of work.

33. Respondent did not create a "Job Plan" for the installation of the temporary quench line, which Respondent's maintenance work process requires for all work completed at the

Facility.

34. Respondent's "management of change" internal review process failed to determine whether the temporary quench line was properly installed and the process did not identify the risk of oil entering the OTCW system, passing through Six Separator, and subsequently reaching Lake Michigan before the change was implemented.

35. Respondent did not include key stakeholders affected by the installation of the temporary quench line or knowledgeable of its risks in meetings where the risks of installing the temporary quench line were discussed, and Respondent did not complete internally required paperwork that assessed the risks of crude oil backflowing into water systems.

36. In September of 2015, Respondent implemented enhanced procedures for making connections to the OTCW system, including additional approval processes, risk assessment measures, and training requirements.

37. Respondent failed to design and maintain a safe facility taking such steps as are necessary to prevent accidental releases, in violation of the General Duty Clause at Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Civil Penalty

38. Based on an analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 86*, dated June 12, 2012, Complainant has determined that an appropriate civil penalty to settle this action is \$50,313.

39. Within 30 days after the effective date of this CAFO, Respondent must pay the \$50,313 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

The comment or description field of the electronic funds transfer must state Respondent's name and the docket number of this CAFO.

40. Respondent must send a notice of payment that states Respondent's name and the document number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Ellen Riley (SC-5J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Kasey Barton (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

41. This civil penalty is not deductible for federal tax purposes.

42. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

43. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

44. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: barton.kasey@epa.gov (for Complainant); and Whiting.cd.tracker@bp.com (for Respondent).

45. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts alleged in this CAFO.

46. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

47. Respondent certifies to the best of its knowledge and belief after reasonable inquiry it is complying with the requirements of the General Duty Clause at Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

48. This CAFO does not affect Respondent’s responsibility to comply with the CAA and other applicable federal, state, and local laws. Except as provided in paragraph 45, above,

compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

49. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Combined Enforcement Response Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

50. The terms of this CAFO bind Respondent, its successors and assigns.

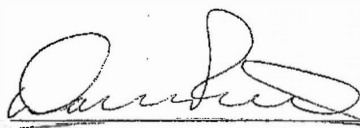
51. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

52. Each party agrees to bear its own costs and attorney fees in this action.

53. This CAFO constitutes the entire agreement between the parties concerning the violations alleged herein.

BP Products North America Inc., Respondent


May 12, 2016
Date



Donald Porter
Whiting Refinery Manager
BP Products North America Inc.

United States Environmental Protection Agency, Complainant

5-31-16
Date



Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: BP Products North America Inc.
Docket No. CAA-05-2016-0027

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

June 9, 2016
Date

Robert A. Kaplan
Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: BP Products North America Inc.
Docket Number: **CAA-05-2016-0027**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number *CAA05-2016-0027*, which was filed on *6/13/2016*, in the following manner to the following addressees:

Copy by E-mail to Respondent: Rebecca Raftery
Whiting.cd.tracker@bp.com

Copy by E-mail to Attorney for Complainant: Kasey Barton
barton.kasey@epa.gov

Copy by E-mail to Enforcement Officer: Ellen Riley
riley.ellen@epa.gov

Copy by E-mail to Attorney for Respondent: Rebecca Raftery
Rebecca.Raftery@uk.bp.com

Paul Drucker
Paul.Drucker@btlaw.com

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: *June 13, 2016*

L. Whitehead
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5